

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:CTM:LN:POSTF-134076-02  
JMMarr

date: JUL 26 2002

to: Examination Division (LMSB:HMT:1752 (Santa Ana POD))  
Attention: Josephine Robinson, Group Manager  
Art Estrada, Revenue Agent

from: June Y. Bass, Associate Area Counsel (LMSB)  
Joyce M. Marr, Attorney (LMSB)

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subject: Taxpayer: [REDACTED] Corp. & Subs.

EIN: [REDACTED]

Issue: Preparation of Form 872

Year: [REDACTED]

Expiration of Statute of Limitations: on or about [REDACTED]

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum responds to your request dated June 10, 2002, for assistance in properly preparing Form 872, Consent To Extend The Time To Assess Tax, for the tax year [REDACTED] of [REDACTED] Corp. (EIN: [REDACTED]) & Subs. consolidated group. This memorandum should not be cited as precedent.

**ISSUE**

Who is the proper party to extend the statute of limitations with regard to the [REDACTED] Corp. (EIN: [REDACTED]) & Subs. consolidated group for its taxable year ended June 30, [REDACTED]?

**CONCLUSION**

The Service should obtain a Form 872 captioned "[REDACTED] Corp. (EIN: [REDACTED]) & Subs.\*". On the bottom of the Form, you should add the following: "\*\*\*This is with respect to the consolidated income tax liability of the [REDACTED]"

██████████ Corp. (EIN: ██████████) & Subs. consolidated group for the taxable year ended June 30, ██████████."

The Corporate Name in the signature block should read: "██████████ Corp." The signature block should be signed by a current officer of ██████████ Corp. (EIN: ██████████) and the signature block should include the officer's name typed or printed and the officer's official title.

Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

#### FACTS<sup>1</sup>

██████████ Corp. (EIN ██████████) (hereinafter sometimes referred to herein as "the Taxpayer") has requested a delay until late ██████████ in the opening of the Service's audit of its consolidated income tax return for its tax year ended June 30, ██████████. Since the original statute of limitations for such tax year is scheduled to expire on or about ██████████, the Taxpayer is being requested to execute a Form 872 extending the assessment expiration date to June 30, ██████████.

██████████, Inc. (██████████), a California corporation, was the parent of a consolidated group, consisting of ██████████, an ██████████ corporation, and ██████████, a California corporation. (See the organizational chart under the heading "Corporate Structure Prior to the Transactions" on Exhibit A affixed hereto.) As a result of the Transactions described in Exhibit A, which took place on ██████████, ██████████ Corp., formerly known as ██████████ (i.e., the Taxpayer) became the parent of the consolidated group, with the corporate structure as set forth under the heading "Existing Corporate Structure" on Exhibit A. No further restructurings (or name changes) have taken place since ██████████. Thus, the Taxpayer is still the parent of the consolidated

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<sup>1</sup> Our understanding of the facts of this case is limited to the information that you have provided in this case unless otherwise stated. We have not undertaken any independent investigation of the facts of this case. If the facts known to us are incorrect or incomplete in any material respect, you should not rely on this advice, but instead, should contact our office immediately.

group.

The Taxpayer filed a consolidated Form 1120, U.S. Corporation Income Tax Return for the tax year ended June 30, [REDACTED]. The subsidiaries included on the return were [REDACTED], formerly [REDACTED] and [REDACTED]. (See page 1 of the Form 1120 and the Affiliations Schedule (Form 851) filed with the Form 1120, which are affixed hereto as Exhibit B.)

#### DISCUSSION

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members of the group. Treas. Reg. § 1.1502-77(a).

Generally, the Service must make an assessment of tax within three years after a return is filed. I.R.C. § 6501(a). However, before the period for making an assessment expires, the Service and the taxpayer may consent in writing to extend the period for making an assessment. I.R.C. § 6501(c)(4).

Once the Transactions took place on [REDACTED], the Taxpayer became the new common parent of the consolidated group in question and accordingly, filed the consolidated Form 1120 for [REDACTED] as the common parent of the group. Hence, the Taxpayer, which is still in existence, is the proper party to execute the Form 872 for the year [REDACTED].

This advice has been coordinated with the Office of Chief Counsel.

Please call Joyce M. Marr at (949)360-2688 if you have any questions.

Encl: Exhibit A: The Transactions  
Exhibit B: page 1 of the [REDACTED] Form 1120 and the Affiliations Schedule filed with such Form 1120